

AMENDED IN ASSEMBLY JULY 14, 2003

AMENDED IN ASSEMBLY MAY 12, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 848

Introduced by Assembly Member Nation

February 20, 2003

~~An act to add Sections 17250.8 and 24349.8 to~~ *An act to amend Sections 17039 and 23036 of, and to add and repeal Sections 17053.63, 17250.8, 23633, and 24349.8 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as amended, Nation. Income and corporation taxes: tax: federal benefit.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity to federal income tax laws, allow certain deductions for a purchase of a qualified vehicle weighing 6,000 pounds or more in computing the income that is subject to the taxes imposed by those laws.

This bill would, *with specified exceptions*, modify those conformity provisions to prohibit various deductions under those laws for costs paid or incurred in connection with purchases *or leases* of large sport utility vehicles, as defined, *placed in service on or after January 1, 2004, and before January 1, 2008*. This bill would make certain legislative findings and declarations relating to the reasons for disallowing the tax incentives for large sport utility vehicles.

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2004, and before January 1, 2008, in an amount equal to \$1,000 for each of certain types of reduced-emission vehicles purchased during the taxable year. This bill would also allow a taxpayer to reduce the tax imposed by either the Personal Income Tax Law or the Corporation Tax Law by the amount of the credit, as specified, below the tentative minimum tax. The bill would limit the aggregate amount of credits for each taxable year to the total estimated amount of the increase in state taxes due to the disallowance of deductions by the bill.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the
- 2 following:
- 3 (a) Under existing federal law, a small business is allowed to
- 4 deduct for federal income tax purposes up to twenty-five thousand
- 5 dollars (\$25,000) when it purchases and places in service a vehicle
- 6 weighing 6,000 pounds or more.
- 7 (b) The original intent of this large vehicle provision was to
- 8 assist farmers and business owners requiring light trucks or vans
- 9 in their workplaces.
- 10 (c) Since the original large vehicle tax deduction was enacted,
- 11 Sport Utility Vehicles (SUVs) have dramatically grown in size.
- 12 There are currently 38 different luxury passenger SUVs that weigh
- 13 more than 6,000 pounds and qualify for a substantial tax
- 14 deduction. A similar deduction is not available for smaller
- 15 passenger SUVs.
- 16 (d) Existing federal tax law provides an incentive for small
- 17 businesses to purchase larger, less fuel-efficient SUVs.



(e) California should not allow these federal incentives for large SUVs.

SEC. 2. *Section 17039 of the Revenue and Taxation Code is amended to read:*

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term “net tax” means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the “net tax” shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against “net tax” in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions, except for those that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(6) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(7) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph ~~(6)~~ (7) of subdivision (a).

- 1 (c) (1) Notwithstanding any other provision of this part, no tax
2 credit shall reduce the tax imposed under Section 17041 or 17048
3 plus the tax imposed under Section 17504 (relating to the separate
4 tax on lump-sum distributions) below the tentative minimum tax,
5 as defined by Section 17062, except the following credits:
- 6 (A) The credit allowed by Section 17052.2 (relating to teacher
7 retention tax credit).
- 8 (B) The credit allowed by former Section 17052.4 (relating to
9 solar energy).
- 10 (C) The credit allowed by former Section 17052.5 (relating to
11 solar energy, repealed on January 1, 1987).
- 12 (D) The credit allowed by former Section 17052.5 (relating to
13 solar energy, repealed on December 1, 1994).
- 14 (E) The credit allowed by Section 17052.12 (relating to
15 research expenses).
- 16 (F) The credit allowed by former Section 17052.13 (relating to
17 sales and use tax credit).
- 18 (G) The credit allowed by former Section 17052.15 (relating to
19 Los Angeles Revitalization Zone sales tax credit).
- 20 (H) The credit allowed by Section 17052.25 (relating to the
21 adoption costs credit).
- 22 (I) The credit allowed by Section 17053.5 (relating to the
23 renter's credit).
- 24 (J) The credit allowed by former Section 17053.8 (relating to
25 enterprise zone hiring credit).
- 26 (K) The credit allowed by former Section 17053.10 (relating to
27 Los Angeles Revitalization Zone hiring credit).
- 28 (L) The credit allowed by former Section 17053.11 (relating to
29 program area hiring credit).
- 30 (M) For each taxable year beginning on or after January 1,
31 1994, the credit allowed by former Section 17053.17 (relating to
32 Los Angeles Revitalization Zone hiring credit).
- 33 (N) The credit allowed by Section 17053.33 (relating to
34 targeted tax area sales or use tax credit).
- 35 (O) The credit allowed by Section 17053.34 (relating to
36 targeted tax area hiring credit).
- 37 (P) The credit allowed by Section 17053.49 (relating to
38 qualified property).
- 39 (Q) *The credit allowed by Section 17053.63 (relating to*
40 *qualified vehicle purchase).*



1 (R) The credit allowed by Section 17053.70 (relating to
2 enterprise zone sales or use tax credit).

3 ~~(R)~~

4 (S) The credit allowed by Section 17053.74 (relating to
5 enterprise zone hiring credit).

6 ~~(S)~~

7 (T) The credit allowed by Section 17054 (relating to credits for
8 personal exemption).

9 ~~(T)~~

10 (U) The credit allowed by Section 17054.5 (relating to the
11 credits for a qualified joint custody head of household and a
12 qualified taxpayer with a dependent parent).

13 ~~(U)~~

14 (V) The credit allowed by Section 17054.7 (relating to the
15 credit for a senior head of household).

16 ~~(V)~~

17 (W) The credit allowed by former Section 17057 (relating to
18 clinical testing expenses).

19 ~~(W)~~

20 (X) The credit allowed by Section 17058 (relating to
21 low-income housing).

22 ~~(X)~~

23 (Y) The credit allowed by Section 17061 (relating to refunds
24 pursuant to the Unemployment Insurance Code).

25 ~~(Y)~~

26 (Z) Credits for taxes paid to other states allowed by Chapter 12
27 (commencing with Section 18001).

28 ~~(Z)~~

29 (AA) The credit allowed by Section 19002 (relating to tax
30 withholding).

31 (2) Any credit that is partially or totally denied under paragraph
32 (1) shall be allowed to be carried over and applied to the net tax in
33 succeeding taxable years, if the provisions relating to that credit
34 include a provision to allow a carryover when that credit exceeds
35 the net tax.

36 (d) Unless otherwise provided, any remaining carryover of a
37 credit allowed by a section that has been repealed or made
38 inoperative shall continue to be allowed to be carried over under
39 the provisions of that section as it read immediately prior to being
40 repealed or becoming inoperative.

1 (e) (1) Unless otherwise provided, if two or more taxpayers
2 (other than husband and wife) share in costs that would be eligible
3 for a tax credit allowed under this part, each taxpayer shall be
4 eligible to receive the tax credit in proportion to his or her
5 respective share of the costs paid or incurred.

6 (2) In the case of a partnership, the credit shall be allocated
7 among the partners pursuant to a written partnership agreement in
8 accordance with Section 704 of the Internal Revenue Code,
9 relating to partner's distributive share.

10 (3) In the case of a husband and wife who file separate returns,
11 the credit may be taken by either or equally divided between them.

12 (f) Unless otherwise provided, in the case of a partnership, any
13 credit allowed by this part shall be computed at the partnership
14 level, and any limitation on the expenses qualifying for the credit
15 or limitation upon the amount of the credit shall be applied to the
16 partnership and to each partner.

17 (g) (1) With respect to any taxpayer that directly or indirectly
18 owns an interest in a business entity that is disregarded for tax
19 purposes pursuant to Section 23038 and any regulations
20 thereunder, the amount of any credit or credit carryforward
21 allowable for any taxable year attributable to the disregarded
22 business entity shall be limited in accordance with paragraphs (2)
23 and (3).

24 (2) The amount of any credit otherwise allowed under this part,
25 including any credit carryover from prior years, that may be
26 applied to reduce the taxpayer's "net tax," as defined in
27 subdivision (a), for the taxable year shall be limited to an amount
28 equal to the excess of the taxpayer's regular tax (as defined in
29 Section 17062), determined by including income attributable to
30 the disregarded business entity that generated the credit or credit
31 carryover, over the taxpayer's regular tax (as defined in Section
32 17062), determined by excluding the income attributable to that
33 disregarded business entity. No credit shall be allowed if the
34 taxpayer's regular tax (as defined in Section 17062), determined
35 by including the income attributable to the disregarded business
36 entity, is less than the taxpayer's regular tax (as defined in Section
37 17062), determined by excluding the income attributable to the
38 disregarded business entity.

39 (3) If the amount of a credit allowed pursuant to the section
40 establishing the credit exceeds the amount allowable under this

subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

(h) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-through entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-through entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year the credit is operative.

(3) This subdivision shall apply to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 2.5. Section 17053.63 is added to the Revenue and Taxation Code, to read:

17053.63. (a) For each taxable year beginning on or after January 1, 2004, and before January 1, 2008, there shall be allowed as a credit against the "net tax," as defined in Section 17039, to a taxpayer who purchases a "qualified vehicle" (as defined in subdivision (b)) during the taxable year. The amount of credit allowed by this section shall be an amount equal to one thousand dollars (\$1,000) for each "qualified vehicle" (as defined in subdivision (b)) purchased by the taxpayer during the taxable year and placed in service in this state during that taxable year.

(b) For purposes of this section, "qualified vehicle" means a vehicle that satisfies both of the following requirements:

(1) The vehicle is a new Zero Emission Vehicle (ZEV), Partial Zero Emission Vehicle (PZEV), or Advanced Technology Partial Zero Emission Vehicle (ATPZEV), as defined in Section 1962 of Title 13 of the California Code of Regulations.

(2) The vehicle has been granted a tax credit certificate under subdivision (d).

(c) (1) The total aggregate amount of credits granted to all taxpayers by this section and Section 23633 for each fiscal year

1 may not exceed the sum of the estimated amount of the increase in
2 state taxes during the fiscal year pursuant to Sections 17250.8 and
3 24349.8 as determined under paragraph (2).

4 (2) On October 1, 2003, and on October 1 of each year
5 thereafter, the Franchise Tax Board shall estimate the sum of the
6 amount of the increase in state taxes during the fiscal year
7 pursuant to Sections 17250.8 and 24349.8 and provide that
8 determination to the State Air Resources Board.

9 (d) The Air Resources Board shall do all of the following:

10 (1) Accept applications from retail dealers for tax credit
11 certificates. The application must show that the number of tax
12 credit certificates requested reflects the number of vehicles (as
13 defined in paragraph (1) of subdivision (b)) held as inventory by
14 the retail dealer that have not been issued tax credit certificates.

15 (2) (A) Issue tax credit certificates in an aggregate amount
16 that may not exceed the limit specified in subdivision (c) for the
17 fiscal year.

18 (B) The number of available tax credit certificates shall be
19 determined by dividing the aggregate amount of credit for the
20 fiscal year specified in subdivision (c) by one thousand dollars
21 (\$1,000) and rounding up to the next whole number in the case
22 where a fractional credit certificate would otherwise result.

23 (C) The tax credit certificates shall be issued to retail dealers
24 on a "first come, first served" basis to reflect the chronological
25 order that the retail dealer submitted a valid application under
26 paragraph (1).

27 (e) The retail dealer shall do all of the following:

28 (1) As part of the retail dealer's application under paragraph
29 (1) of subdivision (d), provide the Air Resources Board with those
30 documents deemed necessary by the Air Resources Board to verify
31 that application.

32 (2) Provide the purchaser of a "qualified vehicle" (as defined
33 in subdivision (b)) with the original (or duplicate original) of the
34 tax credit certificate issued under subdivision (d). The tax credit
35 certificate provided to the purchaser must contain the vehicle
36 identification number of the qualified vehicle.

37 (3) Retain a copy of the tax credit certificate provided to the
38 purchaser with respect to each "qualified vehicle" (as defined in
39 subdivision (b)).

(f) To be eligible for the credit under this section the taxpayer shall do all of the following:

(1) Retain the tax credit certificate provided by the retail dealer to the taxpayer under subdivision (e).

(2) Provide a copy of the tax credit certificate described in paragraph (1) to the Franchise Tax Board upon request. If the taxpayer fails to comply with the requirements of this subdivision, no credit may be allowed to that taxpayer with respect to that vehicle under this section for any taxable year unless the taxpayer subsequently complies.

(g) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and the succeeding five years, or until the credit has been exhausted, whichever occurs first.

(h) (1) For purposes of this section, the amount of the credit specified in subdivision (a) shall be allowed only if the taxpayer owns the “qualified vehicle” (as defined in subdivision (b)) for a period of not less than three taxable years beginning with the taxable year that it is placed in service and the succeeding two taxable years and during each of the three taxable years during that period at least 80 percent of the total use of the vehicle is within this state.

(2) There shall be added to the tax in the first taxable year in which the taxpayer fails to satisfy the requirements of paragraph (1) an amount equal to the amount of the credit specified in subdivision (a) multiplied by the ratio that the number of taxable years for which the taxpayer failed to satisfy the requirements of paragraph (1) bears to three.

(i) This section shall remain in effect only until December 1, 2008, and as of that date is repealed.

SEC. 3. Section 17250.8 is added to the Revenue and Taxation Code, to read:

17250.8. (a) In the case of a “large sport utility ~~vehicle,~~” vehicle” placed in service on or after January 1, 2004, and before January 1, 2008, all of the following apply:

(1) Section 162(a)(3) of the Internal Revenue Code is modified to provide that no deduction is allowed under that section for any payments made as a condition to the continued use or possession, for purposes of the trade or business, of any “large sport utility vehicle.”

(2) Section 167 of the Internal Revenue Code, relating to depreciation, is modified to provide that no deduction is allowed under that section for any “large sport utility vehicle.”

~~(2)–~~

(3) Section 168 of the Internal Revenue Code, relating to accelerated cost recovery system, is modified to provide that no deduction is allowed under that section for any “large sport utility vehicle.”

~~(3)–~~

(4) Section 179 of the Internal Revenue Code, relating to election to expense certain depreciable business assets, is modified to provide that no deduction is allowed under that section for any “large sport utility vehicle.”

~~(4)–~~

(5) Section 1245(a)(3) of the Internal Revenue Code, relating to Section 1245 property, is modified to provide that the term “Section 1245 property” does not include any “large sport utility vehicle.”

~~The~~ (b) *For purposes of this section, the term “large sport utility vehicle” means a four-wheeled vehicle manufactured primarily for use on public streets, roads, and highways if the vehicle meets all of the following requirements:*

(1) Is rated between 6,000 and 14,000 pounds gross vehicle weight.

(2) Is designed to seat nine or fewer individuals.

(3) Is not equipped with an open cargo area with an interior length of 72 or more inches or does not have a covered box with an interior length of 72 or more inches that is separate from the passenger compartment.

~~SEC. 3.—~~

(c) *This section does not apply to any of the following:*

(1) *A farming business, as defined in Section 263A(e)(4) of the Internal Revenue Code, except that in addition to the trades or businesses included therein, the term “farming business” also includes the trade or business of producing, raising, or harvesting any of the products identified in Section 54004 of the Food and Agricultural Code.*

(2) *A timber business, which is defined as the trade or business of conducting timber operations as defined in Section 2032A(e)(13)(C) of the Internal Revenue Code.*

1 (3) A construction business, which is defined as the trade or
2 business that uses construction contracts as defined in Section
3 460(e)(4) of the Internal Revenue Code.

4 (d) This section shall remain in effect only until December 1,
5 2008, and as of that date is repealed.

6 SEC. 4. Section 23036 of the Revenue and Taxation Code is
7 amended to read:

8 23036. (a) (1) The term “tax” includes any of the following:

9 (A) The tax imposed under Chapter 2 (commencing with
10 Section 23101).

11 (B) The tax imposed under Chapter 3 (commencing with
12 Section 23501).

13 (C) The tax on unrelated business taxable income, imposed
14 under Section 23731.

15 (D) The tax on S corporations imposed under Section 23802.

16 (2) The term “tax” does not include any amount imposed
17 under paragraph (1) of subdivision (e) of Section 24667 or
18 paragraph (2) of subdivision (f) of Section 24667.

19 (b) For purposes of Article 5 (commencing with Section
20 18661) of Chapter 2, Article 3 (commencing with Section 19031)
21 of Chapter 4, Article 6 (commencing with Section 19101) of
22 Chapter 4, and Chapter 7 (commencing with Section 19501) of
23 Part 10.2, and for purposes of Sections 18601, 19001, and 19005,
24 the term “tax” shall also include all of the following:

25 (1) The tax on limited partnerships, imposed under Section
26 17935 or Section 23081, the tax on limited liability companies,
27 imposed under Section 17941 or Section 23091, and the tax on
28 registered limited liability partnerships and foreign limited
29 liability partnerships imposed under Section 17948 or Section
30 23097.

31 (2) The alternative minimum tax imposed under Chapter 2.5
32 (commencing with Section 23400).

33 (3) The tax on built-in gains of S corporations, imposed under
34 Section 23809.

35 (4) The tax on excess passive investment income of S
36 corporations, imposed under Section 23811.

37 (c) Notwithstanding any other provision of this part, credits
38 shall be allowed against the “tax” in the following order:

39 (1) Credits that do not contain carryover provisions.

- 1 (2) Credits that, when the credit exceeds the “tax,” allow the
2 excess to be carried over to offset the “tax” in succeeding taxable
3 years, except for those credits that are allowed to reduce the “tax”
4 below the tentative minimum tax, as defined by Section 23455.
5 The order of credits within this paragraph shall be determined by
6 the Franchise Tax Board.
- 7 (3) The minimum tax credit allowed by Section 23453.
- 8 (4) Credits that are allowed to reduce the “tax” below the
9 tentative minimum tax, as defined by Section 23455.
- 10 (5) Credits for taxes withheld under Section 18662.
- 11 (d) Notwithstanding any other provision of this part, each of
12 the following shall be applicable:
- 13 (1) No credit shall reduce the “tax” below the tentative
14 minimum tax (as defined by paragraph (1) of subdivision (a) of
15 Section 23455), except the following credits:
- 16 (A) The credit allowed by former Section 23601 (relating to
17 solar energy).
- 18 (B) The credit allowed by former Section 23601.4 (relating to
19 solar energy).
- 20 (C) The credit allowed by Section 23601.5 (relating to solar
21 energy).
- 22 (D) The credit allowed by Section 23609 (relating to research
23 expenditures).
- 24 (E) The credit allowed by Section 23609.5 (relating to clinical
25 testing expenses).
- 26 (F) The credit allowed by Section 23610.5 (relating to
27 low-income housing).
- 28 (G) The credit allowed by former Section 23612 (relating to
29 sales and use tax credit).
- 30 (H) The credit allowed by Section 23612.2 (relating to
31 enterprise zone sales or use tax credit).
- 32 (I) The credit allowed by Section 23612.6 (relating to Los
33 Angeles Revitalization Zone sales tax credit).
- 34 (J) The credit allowed by former Section 23622 (relating to
35 enterprise zone hiring credit).
- 36 (K) The credit allowed by Section 23622.7 (relating to
37 enterprise zone hiring credit).
- 38 (L) The credit allowed by former Section 23623 (relating to
39 program area hiring credit).



1 (M) For each taxable year beginning on or after January 1,
2 1994, the credit allowed by Section 23623.5 (relating to Los
3 Angeles Revitalization Zone hiring credit).

4 (N) The credit allowed by Section 23625 (relating to Los
5 Angeles Revitalization Zone hiring credit).

6 (O) The credit allowed by Section 23633 (relating to targeted
7 tax area sales or use tax credit).

8 (P) The credit allowed by Section 23634 (relating to targeted
9 tax area hiring credit).

10 (Q) The credit allowed by Section 23649 (relating to qualified
11 property).

12 (R) *The credit allowed by Section 23663 (relating to qualified*
13 *vehicle purchase).*

14 (2) No credit against the tax shall reduce the minimum
15 franchise tax imposed under Chapter 2 (commencing with Section
16 23101).

17 (e) Any credit which is partially or totally denied under
18 subdivision (d) shall be allowed to be carried over to reduce the
19 “tax” in the following year, and succeeding years if necessary, if
20 the provisions relating to that credit include a provision to allow
21 a carryover of the unused portion of that credit.

22 (f) Unless otherwise provided, any remaining carryover from
23 a credit that has been repealed or made inoperative shall continue
24 to be allowed to be carried over under the provisions of that section
25 as it read immediately prior to being repealed or becoming
26 inoperative.

27 (g) Unless otherwise provided, if two or more taxpayers share
28 in costs that would be eligible for a tax credit allowed under this
29 part, each taxpayer shall be eligible to receive the tax credit in
30 proportion to its respective share of the costs paid or incurred.

31 (h) Unless otherwise provided, in the case of an S corporation,
32 any credit allowed by this part shall be computed at the S
33 corporation level, and any limitation on the expenses qualifying
34 for the credit or limitation upon the amount of the credit shall be
35 applied to the S corporation and to each shareholder.

36 (i) (1) With respect to any taxpayer that directly or indirectly
37 owns an interest in a business entity that is disregarded for tax
38 purposes pursuant to Section 23038 and any regulations
39 thereunder, the amount of any credit or credit carryforward
40 allowable for any taxable year attributable to the disregarded

1 business entity shall be limited in accordance with paragraphs (2)
2 and (3).

3 (2) The amount of any credit otherwise allowed under this part,
4 including any credit carryover from prior years, that may be
5 applied to reduce the taxpayer's "tax," as defined in subdivision
6 (a), for the taxable year shall be limited to an amount equal to the
7 excess of the taxpayer's regular tax (as defined in Section 23455),
8 determined by including income attributable to the disregarded
9 business entity that generated the credit or credit carryover, over
10 the taxpayer's regular tax (as defined in Section 23455),
11 determined by excluding the income attributable to that
12 disregarded business entity. No credit shall be allowed if the
13 taxpayer's regular tax (as defined in Section 23455), determined
14 by including the income attributable to the disregarded business
15 entity is less than the taxpayer's regular tax (as defined in Section
16 23455), determined by excluding the income attributable to the
17 disregarded business entity.

18 (3) If the amount of a credit allowed pursuant to the section
19 establishing the credit exceeds the amount allowable under this
20 subdivision in any taxable year, the excess amount may be carried
21 over to subsequent taxable years pursuant to subdivisions (d), (e),
22 and (f).

23 (j) (1) Unless otherwise specifically provided, in the case of a
24 taxpayer that is a partner or shareholder of an eligible pass-through
25 entity described in paragraph (2), any credit passed through to the
26 taxpayer in the taxpayer's first taxable year beginning on or after
27 the date the credit is no longer operative may be claimed by the
28 taxpayer in that taxable year, notwithstanding the repeal of the
29 statute authorizing the credit prior to the close of that taxable year.

30 (2) For purposes of this subdivision, "eligible pass-through
31 entity" means any partnership or S corporation that files its return
32 on a fiscal year basis pursuant to Section 18566, and that is entitled
33 to a credit pursuant to this part for the taxable year that begins
34 during the last year a credit is operative.

35 (3) This subdivision shall apply to credits that become
36 inoperative on or after the operative date of the act adding this
37 subdivision.

38 *SEC. 4.5. Section 23663 is added to the Revenue and Taxation*
39 *Code, to read:*

1 23663. (a) For each taxable year beginning on or after
2 January 1, 2004, and before January 1, 2008, there shall be
3 allowed as a credit against the “tax,” as defined in Section 23036,
4 to a taxpayer who purchases a “qualified vehicle” (as defined in
5 subdivision (b)) during the taxable year. The amount of credit
6 allowed by this section shall be an amount equal to one thousand
7 dollars (\$1,000) for each “qualified vehicle” (as defined in
8 subdivision (b)) purchased by the taxpayer during the taxable year
9 and placed in service in this state during that taxable year.

10 (b) For purposes of this section, “qualified vehicle” means a
11 vehicle that satisfies both of the following requirements:

12 (1) The vehicle is a new Zero Emission Vehicle (ZEV), Partial
13 Zero Emission Vehicle (PZEV), or Advanced Technology Partial
14 Zero Emission Vehicle (ATPZEV), as defined in Section 1962 of
15 Title 13 of the California Code of Regulations.

16 (2) The vehicle has been granted a tax credit certificate under
17 subdivision (d).

18 (c) (1) The total aggregate amount of credits granted to all
19 taxpayers by this section and Section 17053.63 for each fiscal year
20 may not exceed the sum of the estimated amount of the increase in
21 state taxes during the fiscal year pursuant to Sections 17250.8 and
22 24349.8 as determined under paragraph (2).

23 (2) On October 1, 2003, and on October 1 of each year
24 thereafter, the Franchise Tax Board shall estimate the sum of the
25 amount of the increase in state taxes during the fiscal year
26 pursuant to Sections 17250.8 and 24349.8 and provide that
27 determination to the State Air Resources Board.

28 (d) The Air Resources Board shall do all of the following:

29 (1) Accept applications from retail dealers for tax credit
30 certificates. The application must show that the number of tax
31 credit certificates requested reflects the number of vehicles (as
32 defined in paragraph (1) of subdivision (b)) held as inventory by
33 the retail dealer that have not been issued tax credit certificates.

34 (2) (A) Issue tax credit certificates in an aggregate amount
35 that may not exceed the limit specified in subdivision (c) for the
36 fiscal year.

37 (B) The number of available tax credit certificates shall be
38 determined by dividing the aggregate amount of credit for the
39 fiscal year specified in subdivision (c) by one thousand dollars

1 (\$1,000) and rounding up to the next whole number in the case
2 where a fractional credit certificate would otherwise result.

3 (C) The tax credit certificates shall be issued to retail dealers
4 on a “first come, first served” basis to reflect the chronological
5 order that the retail dealer submitted a valid application under
6 paragraph (1).

7 (e) The retail dealer shall do all of the following:

8 (1) As part of the retail dealer’s application under paragraph
9 (1) of subdivision (d), provide the Air Resources Board with those
10 documents deemed necessary by the Air Resources Board to verify
11 that application.

12 (2) Provide the purchaser of a “qualified vehicle” (as defined
13 in subdivision (b)) with the original (or duplicate original) of the
14 tax credit certificate issued under subdivision (d). The tax credit
15 certificate provided to the purchaser must contain the vehicle
16 identification number of the qualified vehicle.

17 (3) Retain a copy of the tax credit certificate provided to the
18 purchaser with respect to each “qualified vehicle” (as defined in
19 subdivision (b)).

20 (f) To be eligible for the credit under this section the taxpayer
21 shall do all of the following:

22 (1) Retain the tax credit certificate provided by the retail dealer
23 to the taxpayer under subdivision (e).

24 (2) Provide a copy of the tax credit certificate described in
25 paragraph (1) to the Franchise Tax Board upon request. If the
26 taxpayer fails to comply with the requirements of this subdivision,
27 no credit shall be allowed to that taxpayer with respect to that
28 vehicle under this section for any taxable year unless the taxpayer
29 subsequently complies.

30 (g) In the case where the credit allowed by this section exceeds
31 the “tax,” the excess may be carried over to reduce the “tax” in
32 the following year, and the succeeding five years, or until the credit
33 has been exhausted, whichever occurs first.

34 (h) (1) For purposes of this section, the amount of the credit
35 specified in subdivision (a) shall be allowed only if the taxpayer
36 owns the “qualified vehicle” (as defined in subdivision (b)) for a
37 period of not less than three taxable years beginning with the
38 taxable year that it is placed in service and the succeeding two
39 taxable years and during each of the three taxable years during

1 *that period at least 80 percent of the total use of the vehicle is*
2 *within this state.*

3 (2) *There shall be added to the tax in the first taxable year in*
4 *which the taxpayer fails to satisfy the requirements of paragraph*
5 *(1) an amount equal to the amount of the credit specified in*
6 *subdivision (a) multiplied by the ratio that the number of taxable*
7 *years for which the taxpayer failed to satisfy the requirements of*
8 *paragraph (1) bears to three.*

9 (i) *This section shall remain in effect only until December 1,*
10 *2008, and as of that date is repealed.*

11 SEC. 5. Section 24349.8 is added to the Revenue and Taxation
12 Code, to read:

13 24349.8. (a) In the case of a “large sport utility ~~vehicle,~~”
14 *vehicle” placed in service on or after January 1, 2004, and before*
15 *January 1, 2008, all of the following apply:*

16 (1) *Section 162(a)(3) of the Internal Revenue Code is modified*
17 *to provide that no deduction is allowed under that section for any*
18 *payments made as a condition to the continued use or possession,*
19 *for purposes of the trade or business, of any “large sport utility*
20 *vehicle.”*

21 (2) Section 24349, relating to depreciation, is modified to
22 provide that no deduction is allowed under that section for any
23 “large sport utility vehicle.”

24 ~~(2)~~
25 (3) Section 168(g) of the Internal Revenue Code, relating to
26 alternative depreciation system for certain property, is modified to
27 provide that no deduction is allowed under that section for any
28 “large sport utility vehicle.”

29 ~~(3)~~
30 (4) Section 24356, relating to election to expense certain
31 depreciable business assets, is modified to provide that no
32 deduction is allowed under that section for any “large sport utility
33 vehicle.”

34 ~~(4)~~
35 (5) Section 1245(a)(3) of the Internal Revenue Code, relating
36 to Section 1245 property, is modified to provide that the term
37 “Section 1245 property” does not include any “large sport utility
38 vehicle.”

39 (b) For purposes of this section, *the term* “large sport utility
40 vehicle” means a four-wheeled vehicle manufactured primarily

1 for use on public streets, roads, and highways if the vehicle meets
2 all of the following requirements:

3 (1) Is rated between 6,000 and 14,000 pounds gross vehicle
4 weight.

5 (2) Is designed to seat nine or fewer individuals.

6 (3) Is not equipped with an open cargo area with an interior
7 length of 72 or more inches or does not have a covered box with
8 an interior length of 72 or more inches that is separate from the
9 passenger compartment.

10 ~~SEC. 4.—~~

11 *(c) This section does not apply to any of the following:*

12 *(1) A farming business, as defined in Section 263A(e)(4) of the*
13 *Internal Revenue Code, except that in addition to the trades or*
14 *businesses included therein, the term “farming business” also*
15 *includes the trade or business of producing, raising, or harvesting*
16 *any of the products identified in Section 54004 of the Food and*
17 *Agricultural Code.*

18 *(2) A timber business, which is defined as the trade or business*
19 *of conducting timber operations as defined in Section*
20 *2032A(e)(13)(C) of the Internal Revenue Code.*

21 *(3) A construction business, which is defined as the trade or*
22 *business that uses construction contracts as defined in Section*
23 *460(e)(4) of the Internal Revenue Code.*

24 *(d) This section shall remain in effect only until December 1,*
25 *2008, and as of that date is repealed.*

26 SEC. 6. This act provides for a tax levy within the meaning
27 of Article IV of the Constitution and shall go into immediate
28 effect.